IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

WP(C).No. 8058 of 2007(H)

O.S.NO.308/2001 OF THE SUB COURT-II, ERNAKULAM

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PETITIONER:

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1. DEEPA P.NAIR, D/O K.P.PURUSHOTHAMAN NAIR
   HOUSE NO.37/1725 A, P.S.ROAD,
   KALOOR, KOCHI-17.

2. ANJALI ANIL(MINOR) REPRESENTED BY
   NEXT FRIEND AND GUARDIAN 1ST PETITIONER
   PETITIONERS ARE REPRESENTED BY POWER OF ATTORNEY
   HOLDER,K.P.PURUSHOTHAMAN NAIR, HOUSE NO.37/1725 A,
   P.S.ROAD, KAL0OR, KOCHI-17.

BY ADV. SRI.K.JAGADEESCHANDRAN NAIR

RESPONDENTS:

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1. N.R.BINDU, D/O RADHAMANI AMMA,
   HOUSE NO.T.C.X/928, AMBALATHUNADA,
   MUKKOLACKAL P.O., TRIVANDRUM-44
   REP. BY POWER OF ATTORNEY HOLDER HARIPRASAD,
   ADVOCATE, TRIVANDRUM.

2. LALLY MATHEW,
   PARAYANKUNNEL HOUSE, VELLAYAMKUDI P.O.,
   KATTAPPANA, UDUMPANCHOLA.

3. DHANYA,(MINOR) REP. BY MOTHER
   GUARDIAN LALLY MATHEW,
   RESPONDENTS 2 & 3 REP. BY POWER OF ATTORNEY
   HOLDER K.M.MATHEW, PARAYANKUNNEL HOUSE,
   VELLAYAMKUDI P.O., KATTAPPANA, UDUMPANCHOLA.

BY ADV. SRI.K.K.MOHAMED RAVUF
ADV.G.S.RAGHUNATH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. BALACHANDRAN, J.

W.P.(C) No. 8058 of 2007

Dated this the 19th day of March, 2007.

J U D G M E N T

The petitioners in this writ petition are defendants 1 and 2 in O.S.308/2001 on the file of the Sub Court, Ernakulam represented by their power of attorney holder and father of the 1st petitioner. The 1st respondent is the supplemental 2nd plaintiff impleaded consequent on the death of the 1st plaintiff. Respondents 2 and 3 are defendants 3 and 4 in the suit and they are also represented by the power of attorney holder who is the father of the 3rd defendant.

2. A preliminary decree was passed in O.S.308/2001 aforesaid on 17.5.2004 in terms of the compromise reported by the parties vide I.A. No.2097/2004, whereby plaint -A schedule property was to be divided into five equal shares and one such share was to be allotted to the 2nd plaintiff and defendants 1 to 4. Subsequent thereto, though Ext.P4 final decree application was filed seeking division of the property by making metes and bounds by issuing a commission, parties came to an agreement and on 15.12.2006 Ext.P5 petition was filed along with the said agreement entered into with a prayer that the

agreement be recorded and the partition of A-schedule alone be deemed to be over as agreed to therein and for issuing appropriate directions regarding C-schedule bank deposits. Ext.P6 petition was filed by the power of attorney holder of defendants 3 and 4 and Ext.P7 was filed by the power of attorney holder of defendants 1 and 2 seeking leave respectively for the 3rd and 1st defendants to enter into a settlement respectively on behalf of defendant No.4 and on behalf of defendants No.2. Ext.P5 petition was dismissed vide Ext.P8 order. Compromise was refused to be accepted for the reasons that the natural guardian of defendants 2 and 4 were not appointed as guardian or next friend for the minors in the suit and further that the natural guardian has no authority to delegate that power under a power of attorney to the respective power of attorney holders. It is the said order that is under challenge before me.

3. Respondent No.1 as also respondents 2 and 3 have entered appearance through counsel.

4. The learned counsel for the petitioner as also the learned counsel for the respondents want Ext. P8 order to be set aside and leave to be granted to have the agreement

produced along with Ext.P5 accepted. It is submitted that the parties, who are close relatives, have agreed to settle the matter and on mere technicalities alone, compromise may not be allowed to fall.

5. The mother of the supplemental 2nd plaintiff and the deceased Anil Kumar was the plaintiff in the suit. It is on her death that supplemental 2nd plaintiff is impleaded. It is submitted that the 3rd defendant was married to Sri. Anil Kumar and the 4th defendant is the minor daughter born to him through the 3rd defendant. Similarly, the 1st defendant is the wife of the said Anil Kumar and 2nd defendant is his minor daughter born to the 1st defendant. It is submitted by the counsel for respondents 2 and 3 that the first marriage was the one under the Special Marriage Act between the 3rd defendant and Sri. Anil Kumar. Anyway, validity of the marriage, etc., are not under challenge and the parties having arrived at an agreement as regards the manner in which the assets of the deceased are to be shared and that was accepted also by the trial court while passing a preliminary decree. Those matters fall in for an enquiry at present. The court below having passed a preliminary decree accepting the compromise filed by the

parties, in the same manner in which Ext. P5 is filed, cannot at present, reject Ext.P5 compromise and refuse leave sought for vide Exts. P6 and P7.

6. It is worthy to note that preliminary decree was also being passed on the basis of the compromise signed by the power of attorney holder of the 1st defendant for and on behalf of defendants 1 and 2 and by the power of attorney holder of the 3rd defendant for and on behalf of defendants 3 and 4. It has also to be borne-in-mind that the power of attorney holder of defendants 1 and 2, who signed in the compromise, is none other than the father of the 1st defendant and the power of attorney holder, who signed in the compromise on behalf of defendants 3 and 4 is none other than the father of the 3rd defendant. It is also worthy to note that minor defendants 2 and 4 were impleaded in the suit as being represented respectively by their mother, the 1st defendant and 3rd defendant and they have also undertaken to defend the case on behalf of the respective minors. That being so, it cannot now be said that no guardian has been appointed for the minors in the suit. Thus, the grounds on which, the court below refused to accept the compromise reported vide

agreement filed along with Ext.P5 petition cannot be upheld especially in view of the preliminary decree passed on the basis of a similar compromise entered into between the parties, wherein, also the power of attorney holders were signing on behalf of defendants 1 and 2 as also on behalf of defendants 3 and 4. All the same, I find that the counsel who represented defendants 1 and 2 and the counsel who represented defendants 3 and 4 had not certified that the proposed compromise is for the benefit of the minors.

7. In the result, I set aside Ext.P8 order and direct the court below to accept the agreement produced along with Ext.P5 petition on file granting leave sought for in Exts. P6 and P7, provided a certificate also is filled by the respective lawyers of defendants 1 and 2 and defendants 3 and 4 that the proposed compromise reported vide Ext.P5 agreement is for the benefit of the minors.

This writ petition is disposed with the above directions.

(K.P. BALACHANDRAN, JUDGE)

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KURIAN JOSEPH, J.

OP No.

JUDGMENT

13th March, 2006